

**Before the State of South Carolina
Department of Insurance**

In the Matter of:

Kanawha Insurance Company,

210 South White Street
Lancaster, South Carolina 29721.

SCDI File Number 1999-101501

**Consent Order
Imposing Administrative Penalty**

This matter comes before me pursuant to an agreement entered into between the State of South Carolina Department of Insurance and Kanawha Insurance Company (Kanawha), a South Carolina domestic insurer.

At the time of the most recent market conduct examination of Kanawha by the Department, Kanawha had delegated the administration of its small group health insurance policies to Kanawha Benefit Solutions, Inc. (now Kanawha Healthcare Solutions, Inc. and hereinafter referred to as KHS). Therefore, the Department conducted a limited examination of KHS which disclosed that KHS failed to keep and maintain full and complete records of claims it had paid. The limited examination also disclosed that applications for small group insurance were accepted from agents who were not properly appointed to transact business on Kanawha's behalf. Kanawha and KHS acknowledge these facts, but assert their conduct was not a willful violation of South Carolina law. Nevertheless, this conduct violates §§ 38-13-20 (B), 38-43-40, and 38-43-60 of the South Carolina Code.

Rather than contesting these matters, Kanawha and the Department have agreed to submit the entire matter to me, along with their specific recommendation, for my summary decision. The consensual recommendation was that, in lieu of further administrative proceedings, Kanawha would waive its right to a public hearing and immediately remit to the Department an administrative penalty in the total amount of \$2,500.

Section 38-43-40 of the South Carolina Code states, "A license issued by the director or his designee pursuant to Chapter 5 of this title gives to the insurer obtaining it the right to appoint any number of agents to take risks or transact any business of insurance in the state. However, the director or his designee must be notified of the appointment before the agent takes any risk or transacts any business" as defined in S.C. Code Ann. § 38-43-10 (1989). Similarly, § 38-43-60 in pertinent part states, "All business done in this State by insurers doing the business of insurance as defined in this title must be transacted by their regularly authorized agents." Section 38-13-120 requires all insurers transacting business in South Carolina to "make and keep a full and correct record of the business done by them" and to retain these records for a minimum of five years.

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GENERAL COUNSEL

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Kanawha Ins. Co.

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

Section 38-5-120 of the South Carolina Code states, in pertinent part, that the Director of Insurance "shall revoke or suspend certificates of authority granted to an insurer...if he is of the opinion upon examination or other evidence that...(t)he insurer has not complied with the law or with the provisions of its charter." Alternatively, § 38-5-130 provides that in lieu of license revocation or suspension, the Director may impose a monetary penalty as provided in § 38-2-10.

After a thorough review of the record, carefully considering the recommendation of the parties, and pursuant to my findings of fact, I hereby conclude as a matter of law, that, at the time of the market conduct examination, Kanawha was not in compliance with South Carolina law as outlined above. I hereby impose an administrative penalty against Kanawha in the total amount of \$2,500 pursuant to the authority provided to me by the South Carolina General Assembly. Kanawha must pay this administrative penalty within ten days of the date of my signature upon this consent order. If Kanawha does not pay that total amount on or before that date, the insurer's certificate of authority will be summarily revoked without any further disciplinary proceedings.

The parties have reached this agreement in consideration of Kanawha's full cooperation with the examination and the strong remedial measures Kanawha has taken to address the Department's findings and bring KHS into compliance with South Carolina law. This includes the relocation of KHS from Knoxville, Tennessee to Lancaster, South Carolina. The Department further acknowledges that Kanawha effectively withdrew from the small group health insurance market in February 2000. Therefore, the parties also expressly agree and understand payment of the agreed-upon penalty constitutes full accord and satisfaction of this matter.

By the signature of one of its officers or authorized representative upon this consent order, Kanawha acknowledges this administrative order as a public record subject to the disclosure requirements of the State of South Carolina's *Freedom of Information Act*, S.C. Code Ann. §§ 30-4-10, *et seq.* (1991 and Supp. 2000).

Nothing contained within this administrative order should be construed to limit, or to deprive any person of, any private right of action under the law. Nothing contained within this administrative order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement officer or judicial officer. Nothing contained within this administrative order should be construed to limit the statutory duty, of the Director of Insurance, exercised either directly or through the Department of Insurance, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report." S.C. Code Ann. § 38-3-110 (Supp. 2000).

Therefore, I hereby order Kanawha Insurance Company to pay through the Department an administrative penalty in the total amount of \$2,500 within ten days of the date of my signature on this consent order.

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It is further ordered that a copy of this consent order be immediately transmitted to the National Association of Insurance Commissioners for distribution to its member states.

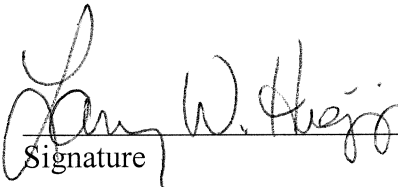
This consent order becomes effective as of the date of my signature below.



Ernst N. Csiszar
Director

May 2, 2001, at
Columbia, South Carolina

I CONSENT:


Signature

LARRY W. HIGGINS
Printed Name

VICE PRESIDENT + GENERAL COUNSEL
Title

Kanawha Insurance Company
210 South White Street
Lancaster, South Carolina 29721

Dated this 24th day of April 2001.